

Message Text

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43

ACTION EUR-25

INFO OCT-01 IO-12 ADP-00 EURE-00 SSO-00 NSCE-00 USIE-00

INRE-00 CIAE-00 DODE-00 PM-07 H-02 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 SAJ-01

ACDA-19 RSR-01 OMB-01 /112 W
----- 012692

O R 231602 Z MAY 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 5251

INFO AMCONSUL BREMEN

AMCONSUL DUSSELDORF

AMCONSUL FRANKFURT

AMCONSUL HAMBURG

AMCONSUL MUNICH

AMCONSUL STUTTGART

USMISSION BERLIN

USMISSION USUN NEW YORK

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E. O.11652: N/A

TAGS: PFOR, GW

SUBJECT: THE BASIC TREATY AND THE CONSTITUTIONAL COURT

REF: MUNICH 865

SUMMARY: LAND BAVARIA'S DECISION TO TAKE THE BASIC
TREATY WITH THE GDR TO THE FEDERAL CONSTITUTIONAL COURT
IN KARLSRUHE WILL PROBABLY NOT MEAN A DELAY IN THE
RATIFICATION OF THE TREATY NOR IN THE FRG APPLICATION
FOR UN ENTRY. END SUMMARY.

1. AS OF THE MORNING OF MAY 23 THE SITUATION IS AS
FOLLOWS. REPRESENTATIVES OF THE CDU/CSU LAENDER WILL
MEET THIS AFTERNOON TO DETERMINE HOW THEY WILL VOTE ON
THE RATIFICATION BILL OF THE BASIC TREATY IN THE BUNDES-
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RAT IN SECOND READING ON MAY 25. WE EXPECT THAT RHINE-LAND- PALATINATE AND BADEN- WUERTTEMBERG WILL NOT SUPPORT BAVARIA'S MOTION TO HAVE THE RATIFICATION BILL SENT TO THE JOINT CONFERENCE COMMITTEE AND THAT THE BILL THUS WILL BE PASSED BY THE BUNDESRAT (AS THE BILL DOES NOT REQUIRE BUNDESRAT ASSENT, AN ABSOLUTE MAJORITY IN THE BUNDESRAT IS NOT REQUIRED).

2. THE COURT IN THE MEANTIME PRESUMABLY WILL HAVE DETERMINED WHETHER OR NOT TO ACCEDE TO THE REQUEST FILED WITH THE COURT BY LAND BAVARIA ON THE MORNING OF MAY 23 CALLING FOR THE COURT TO ENJOIN THE FEDERAL PRESIDENT FROM SIGNING THE RATIFICATION BILL. AS THIS DECISION WILL BE MADE BY THE COURT'S SECOND CHAMBER (THE SO- CALLED " RED" CHAMBER BECAUSE THE MAJORITY OF ITS MEMBERS ARE PRO- SPD), THE VIEW OF THE MAJORITY OF EXPERTS CONSULTED IN BONN IS THAT THE COURT WILL PROBABLY REJECT LAND BAVARIA'S REQUEST AND RATIFICATION CAN BE PROCEEDED WITH. HOWEVER, A NUMBER OF FOREIGN OFFICE OFFICIALS BELIEVE THAT THE COURT WILL GRANT THE ENJOINER. IF IT DOES, THEN ITS DELIBERATIONS ON THE CONSTITUTIONALITY OF THE TREATY WOULD LAST AT LEAST SEVERAL WEEKS AND PERHAPS SEVERAL MONTHS. AS THE GOVERNMENT HAS SAID THAT THE RATIFICATION OF THE BASIC TREATY IS A NECESSARY PRE- REQUISITE FOR THE FRG'S APPLICATION FOR UN ENTRY, WE WOULD EXPECT THE APPLICATION THUS TO BE DELAYED UNTIL THE COURT'S DELIBERATIONS ARE CONCLUDED.

3. WE HAVE HEARD FROM OUR FOREIGN OFFICE CONTACTS THAT THE FEDERAL GOVERNMENT WISHES TO PUSH AHEAD RAPIDLY WITH THE UN MEMBERSHIP ISSUE ONCE THE BASIC TREATY HAS BEEN RATIFIED. THUS, IF, AS EXPECTED, THE CONSTITUTIONAL COURT REJECTS LAND BAVARIA'S PETITION, WE WOULD EXPECT THE FOREIGN OFFICE TO PUSH FOR RAPID CONCLUSION OF BONN GROUP PREPARATIONS FOR CONSULTATIONS WITH THE SOVIETS. WE WOULD ALSO EXPECT AN FRG REQUEST FOR EARLY THREE POWER CONTACT WITH THE SOVIETS WITH A VIEW TO BEGINNING FOUR POWER CONSULTATIONS IN NEW YORK AS SOON AS POSSIBLE.

4. COMMENT: AS THE CDU/ CSU BUNDESTAG FRAKTION HAS LIMITED OFFICIAL USE

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ALREADY VOTED NOT TO GO TO KARLSRUHE, LAND BAVARIA'S ACTION IS DISTASTEFUL TO THE CDU WHICH CONSIDERS IT TO BE POLITICALLY UNWISE. HOWEVER, THE CSU CONTROLS THE LAND GOVERNMENT OF BAVARIA, AND THE CDU THUS HAS NO SAY IN THE MATTER.
HILLENBRAND

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